IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.3009 OF 2004

IN

ARBITRATION PETITION(Lodg) NO.696 OF 2004

Vijay Industries & Projects Ltd. ... Petitioner

vs.

Indian Oil Corporation Ltd. & another. .... Respondents.

Mr.Kamlesh Das i/b. R.S.Datar, for Petitioner

Mr.Gaurav Joshi i/b. R.M.G.Law Associates, for Respondents.

CORAM: D.K.DESHMUKH,J.

DATED: 20th September,2005

P.C.:-

1. This is a notice of motion taken out by the petitioner for condonation of delay in filing the Arbitration Petition. The admitted position is that the Award has been received by the petitioner on 9.6.2004. Though the only reason given is that Mr.N.D.Marathe who appeared before the Arbitral tribunal on behalf of the petitioner had resigned on 15.9.2004. Admittedly however the period of three months

i.e. the period of limitation expired on 10.9.2004, when Mr.Marathe was in service. There is no explanation given as to why Mr.Marathe did not file the petition within a period of three months from the date when the petitioner was served with the Award. Thus, really speaking there is no explanation given by the petitioner for not filing the petition within a period of three months from the date when the petitioner was served with the Award. When the petition is not filed within a period of limitation, the petitioner is under a duty to explain as to why the petition could not be filed within a period of limitation and also to explain every day as to why the petition is not filed after the expiry of period of limitation. The averment in the affidavit filed in support of the notice of motion are absolutely vague. The power of the Court to condone delay is to be exercised liberally and though the explanation may not be sufficient can be accepted by the Court because the prejudice that is likely to be caused to the other side by condoning the delay is capable of being mitigated by awarding cost to the petitioner. Therefore, I put to the learned Counsel for the petitioner that if the petitioner is willing to pay substantial cost to the respondents, the Court can consider the question of condoning the delay, though there is no proper explanation given. The learned Counsel appearing for the petitioner sought time to take instructions. Accordingly, time was given. However, the learned Counsel appearing for the petitioner informed me that he is not in a position to take instructions from his

client. In my opinion, really speaking, there is no question of giving time to the learned Counsel appearing for the petitioner to take instructions from the client, because in a case where there is delay and when the petitioner knows that he has not given proper explanation for delay, the learned Counsel should have sought instructions on the aspect of cost when this notice of motion has been taken out. If the learned Counsel appearing for the petitioner has not taken instructions on the aspect of the cost while taking out the notice of motion, it discloses that the learned Counsel appearing for the petitioner did not act diligently in the matter. In substance therefore, the learned Counsel appearing for the petitioner is not in a position to make a statement before the Court that the petitioner is willing to pay substantial cost to the respondents if the delay in filing the petition is condoned. Thus, I am forced to proceed in a situation where there is virtually no explanation given as to why the petition is not filed within a period of three months from the service of the Award and the petitioner is also not willing to pay substantial cost. In such a situation, I have no option but to dispose of the notice of motion. Notice of Motion is therefore, disposed of.